

APPEAL NO. 93297

At a contested case hearing held in (city), Texas, on March 25, 1993, where the parties stipulated that appellant (claimant) sustained a compensable injury on (date of injury), the hearing officer, (hearing officer), finding that the great weight of the other medical evidence was not contrary to the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission) to examine appellant (claimant), concluded that, consistent with such report, claimant reached maximum medical improvement (MMI) on October 19, 1992, with a seven percent whole body impairment rating. In his request for review, timely under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-6.41(a) (Vernon Supp. 1993) (1989 Act), claimant asserts the seven percent whole body impairment rating is erroneous in that it fails to take into account that claimant is deaf and that his ability to communicate with his arms and hands, as well as to work, has been substantially reduced. The respondent (carrier) filed no response.

DECISION

Finding the evidence sufficient to support the hearing officer's decision, we affirm.

The parties agreed at the benefit review conference on February 8, 1993, that the correct MMI date was October 19, 1992, and thus the MMI date was not a disputed issue before the hearing officer nor has it been raised on this appeal.

According to the Initial Medical Report (TWCC-61) of claimant's treating doctor, Mauro (Dr. P), claimant, who worked for (employer), injured his right elbow on (date of injury), lifting a large bundle of pants to stack on a shelf. On March 6, 1992, claimant saw Dr. P who diagnosed posttraumatic (right) elbow tendinitis, found no range of motion (ROM) limitation, and prescribed conservative treatment. The history in Dr. P's initial report revealed that Dr. P had treated claimant for prior work-related injuries to his right heel in 1987, his left heel in May 1990, and his left elbow in July 1990. According to Dr. P's Specific and Subsequent Medical Report (TWCC-64) of March 17, 1992, Dr. P added to the right elbow tendinitis diagnosis the diagnosis of posttraumatic rotator cuff strain-right shoulder. Claimant testified he continued to work after his February 23rd injury, albeit in pain, because he needed the money. He said he sustained still another work-related injury in October 1992, which involved his left shoulder, and that following that injury he has not worked and has been receiving temporary income benefits. Dr. P's Report of Medical Evaluation (TWCC-69) certified that claimant reached MMI on October 19, 1992, with a 15 percent whole body impairment rating for his right shoulder and right elbow.

Claimant testified he disputed Dr. P's impairment rating and his "Notice of Dispute," dated November 23, 1992, was in evidence. He said the Commission then sent him to be examined by the designated doctor, (Dr. A). According to Dr. A's TWCC-69, to which was attached a detailed narrative report, claimant reached MMI on January 11, 1993, with a whole body impairment rating of seven percent. Dr. A's report noted that claimant was deaf

and mute and that he communicated with Dr. A in sign language which was interpreted by an interpreter. Dr. A's narrative report contained an extensive medical history, the results of Dr. A's examination of claimant, his review of x-rays and medical records which included not only Dr. P's records but also Dr. P's 15 percent impairment rating, and his own explanation of how he determined the seven percent rating.

Claimant testified that although he had no medical evidence that Dr. A's impairment rating was incorrect, he disputed Dr. A's seven percent rating because he felt the examination was not thorough and because the rating does not fairly consider the effect on his life of his reduced ability to communicate with sign language which is the only way he can communicate. However, Article 8308-4.26(g) provides that if the Commission selects the designated doctor, the report of that doctor shall have presumptive weight and the Commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary.

The hearing officer found that the great weight of the other medical evidence was not to the contrary, gave Dr. A's report the presumptive weight to which it is entitled under Article 8308-4.26(g), and determined that claimant's correct impairment rating was seven percent. We have carefully reviewed the hearing record, find no basis to conclude the designated doctor did not perform a sufficient examination to substantiate his evaluation, and are satisfied the evidence is sufficient to support the hearing officer's determination. See Texas Workers' Compensation Commission Appeal No. 93157, decided April 15, 1993, where we similarly viewed the great weight of the other medical evidence as not being contrary to the designated doctor's report.

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge